Mandatory Arbitration Of Workplace Disputes

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Many employers have sought to require compulsory arbitration of claims and disputes with employees and former employees as the sole dispute resolution mechanism available to its workforce.

A recent Superior Court of New Jersey, Appellate Division decision entitled *Morgan v. Raymours Furniture Company, Inc., et. al*. addressed the topic. Although the current state of the law on these issues is particularly fact sensitive, the Court seemed to arrive at some important conclusions which may impact you or your business.

It appears from this decision that to constitute a proper waiver and be enforceable, the language must be clear and unambiguous in advising the employee that he/she is giving up the right to sue in court. The language should also be clear that the waiver relates to all kinds of employment issues and disputes and is not in any way limited to issues of compensation.

It is also clear from this decision that a mandatory arbitration provision contained in a company employment handbook is much less likely to be enforceable than if the provision is contained in a stand-alone document which is acknowledged and signed for by the employee, separate and apart from the handbook. The court's rationale seems reasonable. In order to maintain the employee at will doctrine, employers go to great lengths to proclaim that their company handbooks are not to be construed as employment contracts. Thus, the court has indicated that employers cannot have it both ways and suggest the enforcement of the waiver of the right to sue is a contractual right but the same document provides no contractual rights to the employee, and requires compulsory arbitration. The court has further opined that the creation of a rider which the employer asks the employee to sign demonstrating receipt of and an understanding of the company handbook and "related rules and regulations" is also likely insufficient as a waiver of a right to sue.

An employer seeking maximum enforcement of a mandatory arbitration provision should not only utilize a separate document from the handbook but should advise all employees of this policy and provide them with the document requiring their signature at the time their employment commences. Attempting to secure a signature, even on a stand-alone document, after a dispute arises will likely render the document unenforceable. It follows that courts will not enforce a termination decision based solely on the failure to sign a document issued to the employee so late in the employment process, and particularly if the alternative to signing the document is termination.

As this particular issue and many of the current issues in employment law are rapidly changing, we encourage all small businesses to frequently revisit their employment policies and procedures and to consult with qualified employment counsel, like the attorneys in the employment department at Einhorn Barbarito to make sure all of your policies complement and do not inhibit your business.